

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MADELAINE GONZALEZ and WILLIAM GONZALEZ, Docket No.

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC. and  
HD DEVELOPMENT OF MARYLAND, INC.,

**PETITION FOR REMOVAL  
OF ACTION UNDER 28  
U.S.C. §1446(a) DIVERSITY**

Defendants.

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**TO THE CLERK OF THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK:**

**PLEASE TAKE NOTICE** that Defendants HOME DEPOT U.S.A., INC. and HD DEVELOPMENT OF MARYLAND, INC., hereby submits this Petition for Removal, with full reservation of all defenses, from the Supreme Court of the State of New York, County of New York, to the United States District Court, SOUTHERN DISTRICT of New York in accordance with 28 U.S.C. §1446 and respectfully represents as follows:

**PLAINTIFFS' COMPLAINT AND NATURE OF THE ACTION**

1. This action was commenced against HOME DEPOT U.S.A., INC. and HD DEVELOPMENT OF MARYLAND, INC., in the Supreme Court of the State of New York, County of NEW YORK, with the Index Number 155355/2021 and was electronically filed June 3, 2021.

2. Pursuant to 28 U.S.C. §1446(a), a copy of the Summons and Complaint is attached hereto as **Exhibit "A."**

3. In the Complaint, Plaintiff MADELAINE GONZALEZ alleges personal injury from an incident which occurred on September 15, 2020, at 346 Middle Country Road, Coram, County of Suffolk, State of New York due to Defendants' negligence. **Exhibit "A"**.

4. In the Complaint, Plaintiff WILLIAM GONZALEZ alleges that he has suffered and will continue to suffer the loss and impairment of his spouse's services, society and consortium due to the incident that occurred on September 15, 2020 **Exhibit "A"**.

5. Home Depot U.S.A., Inc. was served on June 8, 2021 through the Secretary of State. **Exhibit "B"**.

6. HD Development of Maryland, Inc. was served on June 11, 2021 through the Secretary of State **Exhibit "C"**.

7. Defendants' Answer to Plaintiffs' Verified Complaint was electronically filed on August 6, 2021. **Exhibit "D"**.

#### **DIVERSITY JURISDICTION IS PROPER**

8. No further proceedings have been had in the Supreme Court of the State of New York, County of New York, as of the date of the filing of this Petition for Removal.

9. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1332. The Plaintiffs have made a formal written demand in excess of \$75,000, exclusive of interest and costs and complete diversity of citizenship exists between Plaintiffs and Defendants Home Depot U.S.A., Inc. and HD Development of Maryland, Inc.

#### **DIVERSITY EXISTS**

10. This firm represents Defendants HOME DEPOT U.S.A., INC. and HD DEVELOPMENT OF MARYLAND, INC. in this action.

11. At the time that this action was filed, Home Depot U.S.A, Inc., was and still is a corporation organized and existing under the laws of the State of Delaware and having the principal place of business at 2455 Paces Ferry Road SW, Atlanta, Georgia.

12. At the time that this action was filed, HD Development of Maryland, Inc., was and still is a corporation organized and existing under the laws of the State of Delaware and having the principal place of business at 2455 Paces Ferry Road SW, Atlanta, Georgia.

13. Pursuant to 28 U.S.C. section 1332(c), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." For the purposes of federal diversity jurisdiction, based upon the above, Defendants are not citizens of the State of New York.

14. The Plaintiffs, in the Complaint, allege to be a citizen of the State of New York with a residence in the County of Suffolk. **Exhibit "A"**.

15. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441.

**THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

16. Plaintiffs have served a written demand confirming that they seek recovery in an amount in excess of \$75,000, exclusive of interest and costs. Plaintiffs' Verified Complaint cannot state the amount of damages Plaintiff deems herself entitled to (CPLR 3107(c)).

17. Defendants' served Demand for Supplemental Statement of Damages on or about August 6, 2021. **Exhibit "E"**.

18. Plaintiffs conveyed a formal written demand on May 26, 2022. The demand was in excess of \$75,000.

19. Defendants submit that Plaintiffs' Response to Defendants' Demand is in excess of \$75,000 proves that the claim is in excess of [\$75,000]. *United Food & Commercial Workers Union, Local 919, AFL-CIO v CenterMark Properties Meriden Square, Inc.*, 30 F.3d 298, 305 (2d Cir. 1994)(quoting *Tongkook Am, Inc. v. Shipton Sportswear Co.*, 14 F.3d 781, 784 (2d Cir. 1994).

20. Defendants reserve their right to contest the nature and extent of liability of plaintiffs' damages. Nevertheless, if liability is ever established, the allegation that Plaintiffs sustained serious

personal injuries, if proven, may convince a trier of fact to award such injured plaintiff an amount in excess of \$75,000.

**REMOVAL IS TIMELY**

21. Pursuant to 28 U.S.C. §1446(b), which provides that a Notice of Removal shall be filed within thirty (30) days after receipt by defendant, by service or otherwise, of the initial pleading or of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, this Petition for Removal is timely filed.

**NOTICE**

22. Pursuant to 28 U.S.C. §1446, a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York.

**VENUE IS PROPER**

23. The United States District Court for the SOUTHERN DISTRICT of New York includes the county in which the state court action was pending (New York County) and thus, pursuant to 28 U.S.C. §124(b)(2), venue is proper.

**RESERVATION OF DEFENSES AND RIGHTS**

24. Defendants reserve all defenses, including, without limitation, the defense of lack of personal jurisdiction.

25. Defendants reserve the right to amend or supplement this Petition for Removal.

26. If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to present a brief and oral argument in support of its position that this case is removable.

**THEREFORE**, all parties to the Civil Action pending in the Supreme Court of the State of New York, County of New York, Index No. 155355/2021 are **HEREBY NOTIFIED** pursuant to 28 U.S.C. §1446 and Local Civil Rule 81.1, as follows:

Removal of the Civil Action and all claims and causes of action therein is effected upon the filing of a copy of this Notice of Removal with the Clerk of the State Court pursuant to 28 U.S.C. §1446. The Civil Action is removed from the State Court to the United States District Court, SOUTHERN DISTRICT of New York. The parties to the Civil Action shall proceed no further in the State Court.

**WHEREFORE**, Defendants HOME DEPOT U.S.A., INC. and HD DEVELOPMENT OF MARYLAND, INC., prays that this cause of action now pending in the Supreme Court of the State of New York, County of New York, be removed to the United States District Court, SOUTHERN DISTRICT of New York.

Dated: New York, New York  
June 2, 2021

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: *Steven Montgomery*

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